IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 523 of 2001
with
Civil Application No.13224 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHVETABEN HARISHKUMAR PARIKH THRO' P.O.A.

Versus

MUKT JIVAN (GHODASAR) OWNERS ASSOCIATION

Appearance:
MR MUKESH R SHAH for the appellant.
MR DEVAN M DESAI for Petitioner No. 1
SERVED BY AFFIX.(N) for Respondent No. 1
MR MB GANDHI for Respondent No. 2-6,8
MRS TRUSHA M GANDHI for Respondent No. 2-8
NOTICE SERVED for Respondent No. 7

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 05/02/2003

ORAL JUDGEMENT

Mr.Shah seeks leave to delete respondent No.1. Permission is granted. Respondent No.1 accordingly stands deleted from the party array.

Appeal is admitted. Mr.Gandhi waives service of notice of admission on behalf of respondents 2 to 8.

With the consent of the parties, the matter is taken up for hearing today.

The present appellant is the original plaintiff. He has filed Civil Suit No.3970 of 1999. The said Civil Suit is filed in the City Civil Court at Ahmedabad for a declaration and injunction. In the aforesaid suit, he submitted an application at Exhibit 5 for interim injunction. In the said suit, the plaintiff prayed for injunction against respondents 5 to 8. The trial court has rejected the said prayer and, ultimately, notice of motion was rejected. The said order is challenged by the appellant-original plaintiff in this Appeal from Order.

Since the learned trial Judge has not discussed the factual aspect of the matter, in detail, and from reading of the order of the trial court, it is not possible for this Court to find out as to what is the controversy between the parties, as no factual aspect is discussed, it is agreed by both the sides that the order may be set aside and the matter may be sent back for fresh hearing and fresh decision, as, unfortunately, the facts of the case and the controversy between the parties are not discussed by the learned trial Judge in the impugned order.

Under the circumstances, the impugned order of the learned trial Judge is set aside and the matter is sent back to the learned trial Judge for deciding the injunction application / Notice of Motion afresh. It is clarified that this Court has not gone into the merits of the issue and the matter is sent back to the trial court in order to see that the Court may consider the factual aspect in detail in the order so that the appellate court can consider the said aspect as and when any appeal is filed by any aggrieved party.

The Appeal from Order is accordingly allowed. The matter is sent back to the trial court for fresh hearing of the Notice of Motion. Learned trial Judge may thereafter pass appropriate orders after hearing the

parties, preferably within a period of one month from the date of receipt of the writ of this Court.

Civil Application No.13224 of 2001 also stands disposed of.

5th February, 2003 (P.B. Majmudar, J.)

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(apj)